Supreme Court, U.S.
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No.

In The

Supreme Court of the United States of America

October Term, 1995

Thomas E. Hauert,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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40 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether *certiorari* should be granted because the Seventh Circuit has ruled contrary to Article I, § 8, cl. 17 of the Constitution for these United States of America and 18 USC § 7(3) in holding that jurisdiction to enforce the criminal penalties of 26 USC §§ 7201 and 7203 upon an Illinois Inhabitant engaged in private activities wholly intrastate in nature is conferred in the district court by 18 U.S.C. § 3231.

2. Whether *certiorari* should be granted because the Seventh Circuit's holding is based on the false presumptions that the private, intrastate activities of Hauert, a state Inhabitant, constitute "income" within the meaning of the 16th Amendment and that the tax thereby authorized is a tax on him as opposed to "on" incomes derived "from" a source as stated therein.

3. Whether *certiorari* should be granted because of the disparity in rulings among the various circuits in holding that the 16th Amendment authorized both a direct nonapportioned tax and an excise tax on incomes, both of which cannot be constitutionally imposed on the same object.

PARTIES TO THE PROCEEDING

There are no parties to this action other than those named in the caption.

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---

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Thomas E. Hauert, In Propria Persona, Sui Juris, respectfully prays that a writ of *certiorari* issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit.

OPINION BELOW

The opinion of the Court of Appeals (Seventh Circuit Docket No. 95-3532) was issued as an *Unpublished Order, Not to be Cited, Per Circuit Rule 53*, Affirming the District Court's Order.

The District Court Case was docketed as No. 95 C 5458, and resulted in an Order of Denial of a 28 USC § 2255 Motion.

JURISDICTION

The judgment of the Seventh Circuit was entered on May 1, 1996. No petition for rehearing has been filed in the Appellate Court. The petition for writ of *certiorari* is being filed within ninety days after the entry of judgment in the Court of Appeals.

Jurisdiction in the Supreme Court is based on 28 USC § 1254(1). The Court of Appeals had jurisdiction under 28 USC § 1291. Jurisdiction of the District Court is derived from 28 U.S.C. § 2255. Initially, jurisdiction to prosecute Hauert criminally is alleged to have arisen under 18 USC § 3231.

STATEMENT OF THE CASE

Petitioner Thomas E. Hauert (hereafter Hauert) was indicted in an 8-count indictment for four (4) alleged violations of 26 USC § 7201 (attempt to evade or defeat tax) and four (4) alleged violations of 26 USC § 7203 (willful failure to file return) for the calendar years 1988 through 1991.

During the period covered by the indictment, Hauert lived at 17448 W. Manhattan Road, Elwood, Illinois and worked at Caterpillar, Inc., on Channahon Road located in Joliet, Illinois - - both of which are located in unceded areas of Illinois.

Hauert was convicted in a jury trial of the charges for which he was indicted and sentenced to twelve (12) months incarceration and three (3) years court supervision. In addition, Hauert was fined $2,000.00, and ordered to pay $1,734.00 monthly during the period of incarceration plus $2,171.00 annually for the cost of supervised release. After the trial, Hauert was granted bond pending appeal.

The Seventh Circuit affirmed his conviction in November 1994 and *certiorari* was denied on May 1, 1995. See *United States v. Hauert*, 40 F.3d. 197 (7th Cir. 1994), *cert. denied*, 115 S.Ct. 1822 (1995).

The Seventh Circuit's mandate was issued on May 23, 1995 and entered on the district court docket the following day. Respondent did not seek to revoke bond pending appeal or to otherwise set a date for surrender until September 1995, after Hauert filed a Rule 60(b) Motion. The respondent took no action until after Hauert served Notice on the government of his Motion for Relief from Judgment.

Upon noting that the district court was treating Hauert's Rule 60(b) Motion as a 28 USC § 2255 Motion, he immediately followed up with a 28 USC § 2255 Motion. After Hauert served Notice of the Rule 60 (b) Motion to vacate judgment, Hauert was allowed opportunity to reply to the Government's Response to his Rule 60(b) Motion for Relief from Judgment on September 25, 1995. On October 13, 1995, the district court denied both the Rule 60(b) and 28 USC § 2255 Habeas Corpus Motions challenging jurisdiction and ordered Hauert to surrender by noon on October 17, 1995.

In the Seventh Circuit's response to Hauert's jurisdictional challenge, both the respondent and the district court ignored the 1956/57 Report of the Interdepartmental Committee for the Study of Jurisdiction over Federal Areas Within the States. This

report was submitted as evidence and thereafter the Seventh Circuit dispensed the report and arguments stating both lacked merit. Neither of the lower courts addressed case law cited by Hauert. The courts below cited cases based on Seventh Circuit case law - - one of the two or more interpretations of the case of *Brushaber v. Union Pacific R.R.* , 240 U.S. 1, 36 S.Ct. 236, 60 L.Ed. 493 (1916) currently espoused by the various circuits.

Hauert then appealed the District Court's decision and the Seventh Circuit affirmed said decision on May 1, 1996, the date judgment was entered. Based on that order the Application for Writ of Certiorari is made.

The basis for jurisdiction in the district court is grounded upon 28 USC § 2255.

Hauert was imprisoned and is still being held captive at FPC Duluth, Minnesota at the date of filing this Application.

REASONS FOR GRANTING THE WRIT

I.

CERTIORARI SHOULD BE GRANTED BECAUSE THE SEVENTH CIRCUIT HAS RULED CONTRARY TO ARTICLE I, § 8, CLAUSE 17 OF THE CONSTITUTION FOR THESE UNITED STATES OF AMERICA AND 18 USC § 7(3) IN HOLDING THAT JURISDICTION TO ENFORCE THE CRIMINAL PENALTIES OF 26 USC §§ 7201 AND 7203 UPON AN ILLINOIS INHABITANT ENGAGED IN PRIVATE ACTIVITIES WHOLLY INTRASTATE IN NATURE IS CONFERRED IN THE DISTRICT COURT BY 18 USC § 3231.

Certiorari should be granted because this is an issue of first impression. The courts below have ignored Hauert's challenge to the imposition of Congress' legislative jurisdiction upon him as an Illinois Inhabitant engaged in private activities, wholly intrastate in nature in the unceded areas of Illinois, and beyond the limits of Article I, § 8. The lower courts held that the United

States District Court is granted subject-matter jurisdiction under 18 USC § 3231 to apply the criminal penalties of 26 USC §§ 7201 and 7203 to him via Article I, § 8 and the 16th Amendment. The jurisdictional issue in this instance is whether Article I, § 8, cl. 17 and 18 USC §§ 5 & 7(3) construed together are a limitation upon 18 USC § 3231.

Hauert asserts that the private activities of living and exercising his Right to Work, in which he was engaged as an Illinois Inhabitant, were not any of those over which Congress has legislative jurisdiction. For example: there are no direct grants of authority in the Constitution for these United States of America (hereafter, the Constitution) for the alleged crimes for which he was convicted (26 USC §§ 7201 & 7203); there is no law or statute creating a liability and requiring the affirmative act of filing government forms; there are no implementing regulations giving legal effect to 26 USC §§ 7201 & 7203; there are no provisions for the alleged crimes in the Criminal Code (Title 18); and although 18 USC § 3231 admittedly grants the district court jurisdiction over the laws of the United States, Hauert at all times was outside of the venue in which Congress has a plenary authority under the Constitution.

The omission of conditions precedent such as no law creating a liability for the tax allegedly imposed upon Hauert, no existing law requiring him to file, and no implementing regulations giving legal effect to the statutes (for 26 USC §§ 7201 & 7203) are prima facie evidence that no lawful demand can be made upon him. This is confirmed by the *Brushaber* case, infra at pp. 10 - 13, that presumes an "income" derived from a source as a condition precedent to a liability for any tax imposed under Article I, § 8 and the 16th Amendment. The fact that these conditions precedent are missing are also prima facie evidence of the lack of Congress' legislative jurisdiction over Hauert in this matter.

Additionally, Congress created 26 USC §§ 6001 and 6011 in which both the prongs of the "tax imposed" and the tax one is

allegedly "liable for" or "made liable for" while the latter brings forth the third prong, "when required by regulations." Hauert asserts that Congress has not fulfilled the duties that the government argues it has the authority to do under Article I, § 8, cl. 18 and Article VI, § 2 to support its case against Hauert. Hauert uses these sections because the Internal Revenue Service cites them in its Notice 609, Privacy Act Notice (Appendix, p. 12a). Congress has not fulfilled the duties that it must to demonstrate that Hauert is one who is liable for a tax on his alleged activities by its failure to create regulations under Title 26 which impose such regulations upon him and his alleged revenue taxable activities. Yet, the government claims authority over him for the tax by relying on the "implied powers" as direct grants of constitutional power over crimes within the meaning of the Constitution.

While the courts below construe the issue as one of subject-matter jurisdiction, the question is whether Congress has the Constitutional authority to impose its legislative jurisdiction on what the Constitution terms a "natural born Citizen" (Art. II, § 1, cl. 5); i.e., on one who is an inhabitant of one of the several states of the Union as is Hauert and whose status is not under the disability of the 14th Amendment, § 1.

In sum, the courts below have failed to address the limitations of 18 USC § 7(3) in conjunction with Art. I, § 8, cl. 17 upon 18 USC § 3231 by claiming a plenary authority over so-called tax crimes against the United States without limitation. The lower courts fail to show the chain of jurisdiction from the Constitution through the statutes and implementing regulations upon which the Congress of the United States relies to enforce the statutes upon Hauert. Jurisdiction has not been proven.

In contradistinction, 5 USC § 556 states:

> (d) The proponent of a rule or order has the burden of proof.

In support thereof, this Court has stated over and over that jurisdiction must be shown on the record - - this does not refer

to a partial jurisdiction. This Court has very clearly stated in its line of cases from the beginning that when there is a jurisdictional issue it must be proven on the record. The party asserting jurisdiction, when challenged, must prove that jurisdiction exists: *McNutt v. General Motors,* 56 S.Ct. 789, 80 L.Ed. 1135; *Albrect v. United States,* 273 U.S. 1. In *Kelly v. United States*, 29 F.3d. 1107, 1113, (1994), the Seventh Circuit itself recently recognized this Court's ruling in *Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 541, 106 S.Ct. 1326, 1331, 89 L.Ed.2d. 501, 511 (1986) that:

> ...every federal appellate court has a special obligation to satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review. *Id.* at 511.

This Court's recent decision in *United States v. Lopez*, 514 U.S. ____, 131 L.Ed.2d. 626, 115 S.Ct. ____ (April 26, 1995), though deciding an issue arising under Article I, § 8, cl. 3, best clarifies the all-embracing Constitutional restrictions on Congress' exclusive legislative jurisdiction and the current attitude of this Court, stating in pertinent part:

> Our national government is one of delegated powers alone. Under our federal system the administration of criminal justice rests with the States except as Congress, acting within the scope of those delegated powers, has created offenses against the United States. 131 L.Ed.2d. 626, 639

To avoid a strong centralized government under our Constitutional system, plenary taxing powers of the sort threatened and enforced via federal police powers today under the 16th Amendment were originally wisely reserved to the states, and to the extent that such powers were abused, the people maintained control over same by their vote. Such is no longer true. But, in *Lopez*, supra, at page 642, Justice Rehnquist clarifies the limitation on the exercise of Congress' police powers:

> The Constitution mandates this uncertainty by withholding from Congress a plenary police power that would authorize an enactment of every type of legislation.

> See U.S. Const., Art. I, §8. Congress has operated within this framework of legal uncertainty ever since this Court determined that it was the judiciary's duty 'to say what the law is.' *Marbury v. Madison*, 1 Cranch 137, 177 (1803) (Marshall, C.J.). Any possible benefit from eliminating this 'legal uncertainty' would be at the expense of the Constitution's system of enumerated powers. *Id.* at 642.

Justice Thomas further adds:

> Indeed, on this crucial point, the majority and JUSTICE BREYER agree in principle: the Federal Government has nothing approaching a police power. *Id.* at 654.

In the absence of direct grants of Constitutional authority and in the absence of criminal statutes for tax crimes in Title 18 the threat of federal police powers and misuse of judicial powers is being used in the same unauthorized manner to enforce so-called criminal tax laws against the private, intra-state activities of the Inhabitants of the several states. Hauert is being held captive in a federal prison camp as a result of the unwarranted use of such federal police power in the states. "Economic necessity" does not justify a violation of Hauert's Constitutional protections such as 5th Amendment due process and the taking of private property without just compensation.

Lopez also demonstrates that Congress' exclusive legislative authority is limited to the District of Columbia, the federal areas and enclaves (Art. I, § 8, cl. 17), and the territories and possessions of the United States (Art. IV, § 3, cl. 2):

> The grant of comprehensive legislative power over certain areas of the Nation, when read in conjunction with the rest of the Constitution, further confirms that Congress was not ceded a plenary authority over the *whole* Nation. *Id.* at 657

Finally, Justice Thomas sums it all up by stating that Congress can exercise a general jurisdiction over crimes in the states only where there has been a direct grant of constitutional authority for same:

> To be sure, Congress outlawed murder, manslaughter, maiming, and larceny, but only when those acts were either committed on United States territory not part of a

> State or on the high seas....When Congress did enact nationwide criminal laws, it acted pursuant to direct grants of authority found in the Constitution. *Id.* at 661 & 662

Such direct grants of authority over crimes as may be extended to those not under Congress' plenary authority extend only to:

> ...provide for the Punishment of counterfeiting the Securities and current Coin of the United States" (Art. I, § 8, cl. 6); "... define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations" (Art. I, § 8, cl. 10); and, ...declare the Punishment of Treason..." (Art. III, § 3, cl. 2)

Hauert next asserts that the 16th Amendment, in conjunction with Article I, § 8, cl. 1, was therefore improperly applied to his case because the 16th Amendment can only lawfully be enforced against those under Congress' plenary authority. The purpose of the 16th Amendment was to protect private personal labor, not to give the government license to steal it. In the absence of laws that make Hauert, an Illinois Inhabitant, liable for the so-called "income tax" and require him to "file," being outside the venue and jurisdiction of Congress, the "voluntary" nature of the tax leaves the decision to him whether or not to "volunteer." The fact that he was ignorant of the "voluntary" nature of the tax until he came into that knowledge is no justification to deceptively manipulate a jury to force him to continue volunteering; i.e., by using his past 1040 forms to convince the jury that he previously recognized a known legal duty to file and is therefore, by implication, compelled to do so for the rest of his life.

Hauert finally asserts that 18 USC § 3231 enforcement action, in the absence of direct grants of Constitutional authority over the crimes he is alleged to have committed, and for which Congress claims authority to make into crimes, is repugnant to his 5th Amendment protections and cannot be sustained under Article I, § 8 to enforce criminal penalty statutes pursuant to the 16th Amendment in the instant case. In

sum, the courts below have failed to balance Hauert's constitutional protections against Congress' delegated powers.

It cannot be demonstrated in any Constitutional sense that Congress acted within the scope of its delegated powers in creating criminal offenses against the United States in tax matters involving state Citizens such as Hauert who have no intercourse with the United States in their private activities. For this reason and those stated above, Certiorari should be granted.

II.

CERTIORARI SHOULD BE GRANTED BECAUSE THE SEVENTH CIRCUIT'S HOLDING IS BASED ON THE FALSE PRESUMPTIONS THAT THE PRIVATE, INTRASTATE ACTIVITIES OF HAUERT, A STATE INHABITANT, CONSTITUTE "INCOME" WITHIN THE MEANING OF THE 16TH AMENDMENT AND THAT THE TAX THEREBY AUTHORIZED IS A TAX ON HIM AS OPPOSED TO "ON" INCOMES DERIVED "FROM" A SOURCE AS STATED THEREIN.

Certiorari should be granted because the so-called "income" tax Hauert allegedly owes is misapplied in a jurisdictional sense in that it is imposed "on" his personal labor ("on" him as the "source" as opposed to being applied on the fruit derived "from" employing labor or utilizing capital, or "from" both combined simply because the district court declares him to be a United States citizen). The grounds on which this Court decided *Pollock v. Farmers' Loan and Trust Co.*, 157 U.S. 429, 39 L.Ed. 759, 15 S.Ct. Rep. 673, 158 U.S. 601, 39 L.Ed. 1108, 15 S.Ct. Rep. 912 (1895), are thereby misconstrued; Hauert's pay is construed as "income" attributable to him. In the meaning of the 16th Amendment, Hauert's payment received for services rendered does not constitute "income" as previously defined by this Court. Further, there is no enabling clause in the 16th Amendment giving Congress legislative powers beyond

those which it originally possessed in the matter of tax collection as against Citizens of the several states.

First and foremost, there mus be "income" before anything as such can be separated "from" the source as the 16th Amendment mandates. That which is not by its definition "income" cannot be defined as "income" by legislative, executive, or judicial fiat. To demonstrate that the instant tax is being misapplied as a tax "on" personal labor which is the source instead of "on" income derived "from" a source, Hauert argues that the Seventh Circuit misapplies the tax to him by holding that:

> ...the tax code imposes a direct nonapportioned [income] tax on United States citizens throughout the nation, not just in federal enclaves... *United States v. Sloan*, 939 F.2d. 499, 501 citing *United States v. Collins*, 920 F.2d. 619, 629 (10th Cir. 1990), *cert. denied*, -- U.S. --, 111 S. Ct. 2022, 114 L.Ed.2d. 108 (1991) (citing *Brushaber v. Union Pacific R.R.*, 240 U.S. 1, 12-19, 36 S.Ct. 236, 239-42, 60 L. Wd. 493 (1916)

as its authority under Article I, § 8 and the 16th Amendment. The court then wrongly includes him in the class of citizens defined as United States citizens who are all under Congress' plenary authority no matter where situated so as to include him directly under Congress' legislative authority as opposed to recognizing his true status as one domiciled within the jurisdiction of Illinois, a Union state. Thus, according to the Seventh Circuit, the tax is "on" Hauert, first, as a United States citizen.

This transmogrification of definitions of the word "citizen", if not already acceded to by this Court, would change the entire character of our Republican form of Government for, by eliminating all state Citizens by judicial fiat, the states are left without citizens and thus without the character of states under the Constitutional concept of individual states making up the Union. That is to say, what remains is a strong centralized government, an unacceptable concept in the scheme of a Republican Form of Government, abhorrent to Article IV, § 4.

> There is in our political system, a government of the several states and a government of the United States. Each is distinct from the other and has citizens of its own. *United States v. Cruikshank*, 92 U.S. 542, 23 L. Ed. 588.

United States citizens, whether residing in the District of Columbia, the federal areas and enclaves, or the territories and possessions of the United States are without question "subject to" Congress' legislative jurisdiction (14th Amendment, § 1). However, Hauert is not a United States citizen in that sense. The courts below have thereby misconstrued him to be within the jurisdiction of 18 USC § 3231.

As for the tax being "on" Hauert's so-called "income, from whatever source derived," this is true only if it can be proven that Hauert is operating a trade or business enjoying the fruits thereof "from" the labor of employees or "from" employees and equipment (capital). As such, this has not been demonstrated or evidenced in any manner by the respondent. Hauert was engaged in a private activity in intrastate commerce in which he exchanged his labor for pay in the Exercise of his 9th Amendment Right to Work. Working for his so-called "income" is the full extent of his activities.

Several years prior to the period covered by the indictment and for which he was convicted, he came into the knowledge of this Court's definition of "income", to wit:

> ...it becomes essential to distinguish between what is and what is not "income," as the term is there used and to apply the distinction, as cases arise, according to truth and substance, without regard to form. Congress cannot, by any definition it may adopt, conclude the matter, since it cannot by legislation alter the Constitution, from which alone it derives its power to legislate, and within whose limitations alone that power can be lawfully exercised. *Eisner v. Macomber*, 252 U.S. 189, 206 (1920)

> The Sixteenth Amendment must be construed in connection with the taxing clauses of the original Constitution and the effect attributed to them before the Amendment was adopted. *Id.* at 205

> Income may be defined as the gain derived from capital, from labor, or from both combined... *Eisner*, supra, at p. 207, citing (*Stratton's Independence v. Howbert*, 231 U.S. 399, 58 L.Ed. 285, 34 S.Ct. 136, 140; *Doyle v. Mitchell Bros. Co.*, 247 U.S. 179, 62 L.Ed. 1054, 38 S.Ct. 467, 469)

In the context of the above cases, Hauert asserts that the payment he received for the services he rendered is not derived "from" any source as the 16th Amendment mandates it must be. For example: not "from" the labor of others he might have employed, nor "from" any capital utilized to generate that so-called "income", nor "from" both combined (*Eisner,* supra, at p. 207). The payment Hauert received for his services was merely an equal exchange for the services he rendered. The payment was an exchange and did not result in any gain or profit. The pay Hauert received for the services he rendered, never fit the U.S. Supreme Court's definition of "income."

The Bill of Rights contains, inter alia, a Right to Work clause (9th Amendment), a due process clause and a private property protection clause (5th Amendment), protecting Hauert's Exercise of his Right to Work to sustain himself and his family which cannot be converted into a taxable privilege. The 5th Amendment to the Constitution encompasses and protects Hauert's labor property in that, it states: "...nor shall private property be taken for public use without just compensation."

If Congress had jurisdiction to tax state Inhabitants' pay resulting from the Exercise of their Right to Work to support themselves and their families, it should have unambiguously passed such legislation and the courts below would be able to demonstrate such jurisdiction on the record without using what appears as judicial chicanery to enforce the income tax laws.

Thus, the pay Hauert received c annot be construed as "income" within the meaning of the 16th Amendment and the U.S. Supreme Court's standing definition of the term "income" which results from a computation of gain or profit. For that reason, Certiorari should be granted in order to resolve the

conflict between this Court's rulings on the definition of "income" and the rulings of the Seventh Circuit. Hauert's private activities were misconstrued by the lower courts in classifying him as one under the jurisdiction of 18 USC § 3231, Article I, § 8 and the 16th Amendment.

III.

CERTIORARI SHOULD BE GRANTED BECAUSE OF THE DISPARITY IN RULINGS AMONG THE VARIOUS CIRCUITS IN HOLDING THAT THE 16TH AMENDMENT AUTHORIZED BOTH A DIRECT NONAPPORTIONED TAX AND AN EXCISE TAX ON INCOMES, BOTH OF WHICH CANNOT BE CONSTITUTIONALLY IMPOSED ON THE SAME OBJECT.

Certiorari should be granted because this Court's holding in *Brushaber* is contradicted by that of the courts below which hold that jurisdiction is conferred because:

> ...the tax code imposes a direct nonapportioned [income] tax on United States citizens throughout the nation, not just in federal enclaves... *Sloan*, supra, at 501

contradicting this Court's holding in *Brushaber*, supra, in that *Brushaber* states:

> ...the contention that the Amendment treats a tax on income as a direct tax although it is relieved from apportionment and is necessarily therefore not subject to the rule of uniformity as such rule only applies to taxes which are not direct, thus destroying the two great classifications which have been recognized and enforced from the beginning, is also wholly without foundation. *Brushaber*, 36 S.Ct. at 242

Although the Seventh Circuit relied on Article I, § 8 and the 16th Amendment to the Constitution for the tax on Hauert; nevertheless, Hauert's pay was not "income " by the U.S. Supreme Court's definition of income for the reasons stated in II above. Therefore, the Seventh Circuit improperly claims

authority for imposing a "direct nonapportioned tax" on what is alleged to be "income" where, in fact, there is no "income" derived from any source in the instant case.

Whatever tax the circuit courts in the various circuits are sanctioning, certainly it is not in all cases the tax authorized by the 16th Amendment. That Amendment did not authorize both a "direct" and an "indirect tax" on incomes. The law being applied by the courts below c annot be upholding a direct nonapportioned [income] tax because that is not what *Brushaber* upheld. See the Seventh Circuit's contradictory holding in *United States v. Sloan* , 939 F.2d. 499 at 501 (7th Cir. 1991) citing *United States v. Collins*, 920 F.2d. 619 at 629 (10th Cir. 1990), *cert. denied*, -- U.S. --, 111 S. Ct. 2022, 114 L.Ed. 108 (1991), citing *Brushaber v. Union Pacific R. R. Co.*, 240 U.S. 1, 60 L.Ed. 493, LRA 1917D, 36 S.Ct. 236.

Confusion abounds in what *Brushaber, supra,* held in the other circuit's appellate courts as well. For example: in the First Circuit, it is difficult to determine the meaning of the 16th Amendment because in *United States v. Turano* , 802 F.2d. 10, 12 (1st Cir. 1986), the court held that the "16th Amendment eliminated the indirect/direct distinction as applied to taxes on income." In the Second Circuit, uncertainty is revealed by three cases. In *Jandorf's Estate v. Commissioner,* 171 F.2d. 464, 465 (2nd Cir. 1948), the court declared, "It should be noted that estate or inheritance taxes are excises....while surtaxes, excess profits and war-profits taxes are direct property taxes." Surtaxes are the graduated taxes of the income tax, so this court holds that the personal income tax is a direct tax. Yet, in *Ficalora v. Commissioner,* 751 F.2d. 85, 87 (2nd Cir. 1984), that court stated that the tax was an indirect tax: "[T]he Supreme Court explicitly stated that taxes on income from one's employment are not direct taxes and are not subject to the necessity of apportionment." In comparison, *United States v. Sitka,* 845 F.2d. 43, 46 (2nd Cir. 1988) citing *Parker v. Commissioner,* 724 F.2d. 469, 471 (5th Cir. 1984) held for the proposition that the tax is direct. In the Third Circuit, it has

been held in one case that all income taxes are direct, but in another, that only some income taxes are direct; see *Keasbey & Mattison v. Rothensies,* 133 F.2d. 894, 897 (3rd Cir. 1943) ("[A]n income tax is a direct tax upon income defined therein"); and *Penn Mutual Indemnity Co. v. Commissioner,* 277 F.2d. 16, 19 (3rd Cir. 1960) ("*Pollock*....only held that a tax on the income derived from real or personal property was so close to a tax on that property itself that it could not be imposed without apportionment. The Sixteenth Amendment removed that barrier"). But the tax must be imposed "on" "income" with due respect given the Bill of Rights.

The difference of opinion in the other circuits as to whether the federal income tax is a direct or indirect tax is even more profound. In the Fourth and Sixth Circuits, the income tax has been held to be an excise tax; see *White Packing Co. v. Robertson,* 89 F.2d. 775, 779 (4th Cir. 1937) ("The tax is, of course, an excise, as are all taxes on income..."); and *United States v. Gaumer,* 972 F. 2d. 723, 725 (6th Cir. 1992) ("*Brushaber* and excerpts from the Congressional Record state that for constitutional purposes, the income tax is an excise tax"). However, the Fifth, Seventh, Eighth, and Tenth Circuits flatly reject that the tax on income is an excise tax and label such arguments as "frivolous." For example, in *Parker v. Commissioner,* supra, at 471 (5th Cir. 1984), the court clearly rejected the contention that the tax was an excise. In *Coleman v. Commissioner,* 791 F.2d. 68, 70 (7th Cir. 1986) the court held that an argument that this tax was an excise was frivolous on its face. ("The power thus long predates the 16th Amendment, which did no more than remove the apportionment requirement..."). A similar conclusion was reached in *United States v. Francisco,* 614 F. 2d. 617, 619 (8th Cir. 1980), where that court held that the income tax was a direct tax. Finally, the Tenth Circuit has flatly rejected the tax as an excise in *United States v. Lawson,* 670 F.2d. 923, 927 (10th Cir. 1982) holding that, "The contention is totally without merit."

Finally, in holding that the 16th Amendment authorized an exceptional direct nonapportioned tax on incomes, the Fifth, Seventh, Eighth, and Tenth Circuits are in opposition to the U.S. Supreme Court's ruling in *Stanton v. Baltic Mining Co.*, 240 U.S. 103, 36 S.Ct. 278 (1916).

Certiorari should be granted because obviously confusion among the circuits exists over the misapplication and unlawful enforcement of the income tax laws which either are honestly misunderstood by the judiciary as evidenced by the opposite interpretations of the nature of the tax, or, the tax is being imposed by judicial chicanery and raw governmental police power. The American people have a right to know the jurisdictional authority that is the basis of the tax imposed upon their pay resulting from their own labor and not the gain or profit computed from someone else's labor. If what constitutes "income" cannot be determined and the tax imposed cannot be defined in law, it is ambiguous, unlawful, and thus null and void.

For too many years this issue has drained American productivity. It has literally wasted billions of Americans' tax dollars in accounting, in enforcement in arguing among ourselves, and has caused a needless waste of tax dollars.

It behooves the Justices of this Supreme Court, to preserve the integrity of the Constitution and the American judicial system, to conscientiously consider these issues and to unambiguously determine for the lower courts the standard to adjudicate the issues raised in this Writ of Certiorari. If this Court cannot state a standard, and if the lower courts cannot follow the standard, then utter confusion will abound both from the top down and from the bottom up. This Court has a tremendous obligation to set that standard. We beg for a ruling to guide further litigation and defer further confusion.

CONCLUSION

Wherefore, Petitioner Thomas Hauert respectfully asks this Honorable Court to grant a petition for writ of *certiorari* to

review the judgment of the United States Court of Appeals for the Seventh Circuit, and that on review it reverse the judgment of the Court of Appeals.

Respectfully submitted,

THOMAS E. HAUERT
In Propria Persona
17448 W. Manhattan Road
Elwood, Illinois
815-478-3260

Sui Juris

APPENDIX

UNITED STATES COURT OF APPEALS

For The Seventh Circuit
Chicago, Illinois 60604

No. 95-3532
THOMAS E. HAUERT

Petitioner-Appellant

v.

UNITED STATES OF AMERICA,

Respondent-Appellee

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 95 C 5458–**William T. Hart,** *Judge.*

SUBMITTED APRIL 30, 1996*
DECIDED MAY 1, 1996

Before POSNER, *Chief Judge,* and MANION
and KANNE, *Circuit Judges*

ORDER

Thomas Hauert brought this motion under 28 U.S.C. § 2255, seeking relief from his sentence for failing to file federal income-tax returns for the years 1988 through 1991, in violation of 26 U.S.C. §§ 7201, 7203.

For the reasons given by the district court in its order, the judgment of the district court is AFFIRMED.

*After an examination of the briefs and he record, we have concluded that oral argument is unnecessary in this case, accordingly, the appeal is submitted on the briefs and record. See Fed. R. App. P. 34(a); Cir. R. 34(f).

UNITED STATES COURT OF APPEALS

For The Seventh Circuit
Chicago, Illinois 60604

JUDGMENT - WITHOUT ORAL ARGUMENT

Date: May 1, 1996
BEFORE: Honorable Richard A. Posner, Chief Judge
Honorable Daniel A. Manion, Circuit Judge
Honorable Michael S. Kanne, Circuit Judge

No. 95-3532
THOMAS E. HAUERT

Petitioner-Appellant

v.

UNITED STATES OF AMERICA,

Respondent-Appellee

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 95 C 5458–William T. Hart, *Judge*.

The judgment of the District Court is AFFIRMED, in accordance with the decision of this court entered on this date.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA
v.
THOMAS HAUERT
(Defendant-Petitioner)
In Propria Persona, Sui Juris

Case Number: 93 CR 285 (95 C 5458)

Pursuant to Memorandum Opinion and Order, IT IS ORDERED that defendant's motions to reconsider surrender, for relief from judgment or order [61], and to vacate, set aside, or correct sentence [70] are denied. The Clerk of the Court is directed to enter judgment in 95 C 5458 denying defendant's motion to vacate, set aside, or correct sentence.

October 13, 1995
Date of Order of Denial

/s/ HartJ
Signature of Judicial Officer

William T. Hart
U.S. District Judge
Name & Title / Judicial Officer

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

THOMAS HAUERT,

Defendant.

MEMORANDUM OPINION AND ORDER

Following a jury trial, defendant Thomas Hauert was found guilty of four counts of tax evasion in violation of 26 U.S.C. § 7201 and four counts of failure to file tax returns in violation of 26 U.S.C. § 7203. The tax years involved were calendar years 1988 through 1991. He was sentenced to twelve months' imprisonment to be followed by three years' supervised release. He was also fined $2,000.00. Hauert was granted bond pending appeal. The Seventh Circuit affirmed his conviction in November 1994 and the Supreme Court denied certiorari on May 1, 1995. See United States v. Hauert , 40 F.3d. 197 (7th Cir. 1994), cert. denied, 115 S.Ct. 1822 (1995). The Seventh Circuit's mandate was issued on May 23, 1995 and entered on the district court docket the following day. The government did not seek to revoke bond pending appeal or to otherwise have a date set for surrender set until September 1995, the situation having been brought to the government's attention when Hauert served notice on the government of his pro se motion for relief from judgment.

On September 25, 1995, this court ordered that Hauert surrender by noon on October 17, 1995. Hauert was also given the opportunity to reply to the government's response to his motion for relief from judgment. To avoid any contention that his motion was without merit because labeled as one pursuant

to Fed. R. Civ. P. 60, Hauert also filed a similar motion that he labeled as a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. In his reply, he also requests reconsideration of being ordered to surrender.

In his motions, Hauert primarily argues that this court lacked jurisdiction to try, sentence, or fine him. The arguments are the usual sort of frivolous "tax protestor" arguments. To the extent Hauert makes any nonjurisdictional argument, he has not alleged any cause or prejudice for failing to raise those arguments on direct appeal. The jurisdictional arguments, though, cannot be waived. Kelly v. United States, 29 F.3d. 1107, 1112-13 (7th Cir. 1994). The jurisdictional contentions, however, lack any merit. See United States v. Hilgeford, 7 F. 3d. 1340, 1342 (7th Cir. 1993); United States v. Sloan, 939 F. 2d. 499, 501 (7th Cir. 1991), cert. denied, 502 U.S. 1060 (1992). This court has jurisdiction to adjudicate criminal violations of the tax laws. Salberg v. United States, 969 F.2d. 379, 384 (7th Cir. 1992); United States v. Latham, 754 F.2d. 747, 749 (7th Cir. 1985). Defendant's motions will be denied.

IT IS THEREFORE ORDERED that defendant's motions to reconsider surrender, for relief from judgment or order [61], and to vacate, set aside, or correct sentence [70] are denied. The Clerk of the Court is directed to enter judgment in 95 C 5458 denying defendant's motion to vacate, set aside, or correct sentence.

ENTER:

/s/ William T. Hart
United States District Judge

Dated: October 13, 1995

CONSTITUTIONAL PROVISIONS

ARTICLE I, § 8, CLAUSE 1

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises, shall be uniform throughout the United States;

ARTICLE I, § 8, CLAUSE 3

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

ARTICLE I, § 8, CLAUSE 6

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

ARTICLE I, § 8, CLAUSE 10

To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

ARTICLE I, § 8, CLAUSE 17

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; -And

ARTICLE I, § 8, CLAUSE 18

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by the Constitution in the Government of the United States, or in any Department or Officer thereof.

ARTICLE II, § 1, CLAUSE 5

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution,...

ARTICLE III, § 3, CLAUSE 2

The Congress shall have Power to declare the Punishment of Treason...

ARTICLE IV, § 3, CLAUSE 2

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States...

ARTICLE IV, § 4

The United States shall guarantee to every State in this Union a Republican Form of Government...

ARTICLE VI, § 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

FIFTH AMENDMENT

No person shall....be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.

NINTH AMENDMENT

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

FOURTEENTH AMENDMENT, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

SIXTEENTH AMENDMENT

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

STATUTES AND RULES INVOLVED

5 USC § 556(d)

(d) The proponent of a rule or order has the burden of proof.

18 USC § 5

United States defined

The term "United States", as used in this title in a territorial sense, includes all places and waters, continental or insular, subject to the jurisdiction of the United States, except the Canal Zone.

18 USC § 7

Special maritime and territorial jurisdiction of the United States defined

The term "special maritime and territorial jurisdiction of the United States", as used in this title, includes:

(1) The high seas, any other waters with the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State....or to any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the Unites States and out of the jurisdiction of any particular State.

(3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

(5) Any aircraft belonging in whole or in part to the United States, or any citizen thereof, or to any corporation created by or under the laws of the United States, or any State, Territory, district, or possession thereof, while such aircraft is in flight over the high seas, or over any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

(7) Any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States.

18 USC § 3231

District Courts

The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.

Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.

26 USC § 6001

Notice or regulations requiring records, statements, and special returns.

Every person liable for any tax imposed by this title...

26 USC § 6011

General requirement of return, statement, or list.

(a) General rule.

When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title...shall

make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

26 USC § 7201

Attempt to evade or defeat tax.

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000 ($500,000 in the case of a corporation) or imprisoned not more than 5 years, or both, together with the costs of prosecution.

26 USC § 7203

Willful failure to file return, supply information, or pay tax.

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under the authority thereof to make a return , keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $25,000 ($100,000 in the case of a corporation) or imprisoned not more than 1 year, or both, together with the costs of prosecution. In the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section 6654 or 6655 with respect to such failure.

28 USC § 1254(1)

Courts of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree...

28 USC § 1291

Final decisions of district courts

The courts of appeals....shall have jurisdiction of appeals from all final decisions of the district courts of the United States...

28 USC § 2255

Federal Custody; remedies on motion attacking sentence

A prisoner in custody under sentence of a court established by an Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

A motion for such relief may be made at any time.

An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

Rule 60

Relief from Judgment or Order

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.

Notice 609
Privacy Act Notice

The Privacy Act of 1974...

Our legal right to ask for information is Internal Revenue Code sections 6001 and 6011 and their regulations. They say that you must file a return or statement with us for any tax you are liable for. Your response is mandatory under these sections. Code section 6109 and its regulations say that you must show your social security number on what you file. This is so we know who you are, and can process your return and papers. You must fill in all parts of the tax form that apply to you. But you do not have to check the boxes for the Presidential Election Campaign Fund.

We may give the information to the Department of Justice and to other federal agencies, as provided by law. We may also give it to states, the District of Columbia and U.S. commonwealths and possessions to carry out their tax laws. And we may give it to foreign governments because of tax treaties they have with the United States.

If you do not file a return, do not provide the information we ask for, or provide fraudulent information, the law provides that you may be charged penalties and, in certain cases, you may be subject to criminal prosecution. We may also have to disallow exemptions, exclusions, credits, deductions, or adjustments shown on the tax return. This could make the tax higher or delay any refund. Interest may also be charged.